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10 *Attorneys for Christina Lovato, Chapter 7 Trustee*

11 **UNITED STATES BANKRUPTCY COURT**
DISTRICT OF NEVADA

12 In re
 13 DOUBLE JUMP, INC.
 14 Debtor.

15 Lead Case No.: BK-19-50102-gs
 16 (Chapter 7)

17 Substantively consolidated with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

18 CHRISTINA W. LOVATO,

19 Plaintiff,
 v.

20 JCB CONSULTING, INC. fka J&C
 21 CONSULTING, INC.; and CARRIE SUE
 22 BODEN-CARPOFF aka CAROLINE SUE
 BODEN-CARPOFF aka CARRIE CARPOFF
 23 aka CARRIE BODEN,

24 Defendants.

25 Adversary No.: 21-05036-gs

26 **TRUSTEE'S SUPPLEMENTAL BRIEF AND**
REQUEST FOR LEAVE TO FILE AN
AMENDED COMPLAINT IN
CONNECTION WITH THIS COURT'S
ORDER AT ECF NO. 22

27 Hearing Date: March 31, 2022

28 Hearing Time: 9:30 a.m.

Christina W. Lovato, as plaintiff and chapter 7 trustee ("Trustee" or "Plaintiff") for the
 substantially consolidated bankruptcy estates of DC Solar Solutions, Inc., DC Solar Distribution,
 Inc., DC Solar Freedom, Inc., and Double Jump, Inc. (together, "DC Solar" or the "Debtors"),

1 files her Supplemental Brief and Request for Leave to File an Amended Complaint (“***Brief and***
 2 ***Request***”), in accordance with this Court’s Order at ECF No. 22 (“***Order***”).
 3

PRELIMINARY STATEMENT

4 The Trustee filed this adversary proceeding to avoid and recover certain transfers made
 5 from DC Solar to and/or for the benefit of defendants JCB Consulting, Inc. fka J&C Consulting,
 6 Inc. (“***J&C***” or “***JCB***” or “***Defendant***”) and Carrie Sue Boden-Carpoff aka Caroline Sue Boden-
 7 Carpooff aka Carrie Carpooff aka Carrie Boden (“***Ms. Boden***”). The Trustee has since dismissed Ms.
 8 Boden as a defendant. [ECF No. 12].

9 In accordance with this Court’s Order, the Trustee files her Brief and Request, respectfully
 10 requesting leave to file an amended complaint against J&C.

PROCEDURAL BACKGROUND

12 Between January 31 and February 5, 2019 (“***Petition Date***”), the Debtors filed their
 13 voluntary chapter 11 petitions. On March 22, 2019, the Debtors’ chapter 11 bankruptcy cases were
 14 converted to chapter 7 and the Trustee was appointed as the chapter 7 trustee.

15 On January 28, 2021, the Trustee filed her complaint commencing this adversary
 16 proceeding against the defendants. ECF No. 1. The Trustee then dismissed Ms. Boden as a
 17 defendant. [ECF No. 12]. J&C has failed to respond to the complaint.

18 Upon the Trustee’s request, the Clerk entered a default against J&C. ECF Nos. 17, 18, &
 19. Thereafter, the Trustee filed her motion for default final judgments with an affidavit in support.
 20 ECF Nos. 20 & 21.

21 On March 21, 2022, this Court entered its Order.

THE FACTS

23 The Trustee alleges the following facts in the Complaint, all of which are required to be
 24 taken as true and with all reasonable inferences drawn in the Trustee’s favor.¹

A. DC Solar and the Carpooff Ponzi Scheme

26 DC Solar was engaged in a business related to manufacturing, marketing, selling, and
 27

28 ¹ See Legal Standard, below.

1 leasing mobile solar generators (“**MSGs**”).² Generally, the business purported to work as follows:
 2 Debtor-DCSS would manufacture and sell MSGs for \$150,000 each. The buyers were typically
 3 tax equity funds owned by a financial investor seeking investment federal tax credits. The buyers
 4 paid DCSS a down payment and executed a promissory note for the remaining balance of the
 5 purchase price. The buyers would lease the MSGs to DCSS’s affiliate, DCSD, which in turn
 6 purported to sub-lease the MSGs to a third-party end-user/sub-lessee. The end-user’s/sub-lessee’s
 7 lease payments were intended to cover the interest payments on the promissory note.³ Over the
 8 years, DCSS closed over two dozen transactions, purportedly selling over 15,000 MSGs and
 9 generating hundreds of millions of dollars of revenue.⁴

10 However, certain of DC Solar’s former insiders, including Jeff Carpoff and Paulette
 11 Carpoff (“**Carpoffs**”), were also perpetrating a Ponzi scheme through DC Solar and other entities.⁵

12 The Carpoffs caused DC Solar to transfer monies obtained from new buyers of
 13 MSGs to cover obligations owed to earlier buyers. This was contrary to the
 14 Carpoffs’ representations (directly or indirectly) to the financial investors that sub-
 15 lessee revenue would pay those obligations. Moreover, the Carpoffs (directly or
 16 indirectly) communicated to the financial investors that DC Solar had manufactured
 17 over 15,000 MSGs, the actual figure was far less. Moreover, although the Carpoffs
 18 (directly or indirectly) represented to the financial investors that DC Solar had a
 19 series of sub-lessees willing to pay to utilize the MSGs, some sub-leases were real
 20 but others were not.

21 Further, the Carpoffs looted DC Solar to, among other things, fund their own lavish
 22 lifestyle, including through casino gambling and the use of private jets and the purchase of real
 23 and personal property (such as automobiles). And the Carpoffs looted DC Solar to, among other
 24 things, pay-off co-conspirators and make payments such as marketing payments (legitimate or
 25 illegitimate) to third-parties. This all was intended, in material part, to further the Carpoff Ponzi
 26 Scheme and/or create the perception that DC Solar was profitable.⁶

27 **B. J&C and Carpoff’s Looting of DC Solar**

28 _____
 29 ² Complaint, ¶ 8.

³ Complaint, ¶ 9.

⁴ Complaint, ¶ 13.

⁵ Complaint, ¶ 14.

⁶ Complaint, ¶¶ 15-16.

1 As explained in the Trustee's complaint, Carpoff perpetrated a Ponzi scheme through DC
 2 Solar and looted DC Solar for his own personal benefit as part of his Ponzi scheme.
 3

4 The Trustee further alleged in her complaint that Carpoff worked with King Solarman to
 5 loot DC Solar, and in doing so, caused DC Solar to transfer monies to King Solarman with the
 6 understanding that a material portion of these monies would then be transferred to J&C for
 7 Carpoff's benefit.⁷ Indeed, the Trustee alleges that although Ms. Boden – Carpoff's sister – was
 8 the nominal sole officer and owner of J&C, Carpoff had control over the entity.⁸ And further, that
 9 the monies funded by King Solarman were actually used by J&C for Carpoff's individual benefit
 10 and for his family members' benefit.⁹ And further, that the Trustee has claims against and is a
 creditor of King Solarman.¹⁰

11 However, the Trustee acknowledges the Court's concern that the Trustee's complaint is
 12 "confusing." Order at pg. 3. And that the Trustee may have insufficiently tied together in her
 13 complaint the facts supporting the Trustee's claims and the transfers she seeks to avoid and
 14 recover, as well as her other requested relief.

15 The Trustee can plead in an amended complaint, among other things, facts relating to: (1)
 16 the transfers; (2) J&C, as a slush fund for Carpoff and his personal interests; (3) Ms. Boden; and
 17 (4) King Solarman; which demonstrates that DC Solar had claims against King Solarman in tort
 18 and against a transferee of King Solarman in avoidance. And the Trustee can plead facts that
 19 support her ability to avoid and recover transfers made to J&C pursuant to 11 U.S.C. §§ 541, 544,
 20 548 & 550 and Ca. Civil Code §§ 3439.04, .07, & .08, and other applicable law and requested
 21 relief.

22 **THE COURT'S CONCERN AS TO THE PROPER PARTIES
 TO THE ADVERSARY PROCEEDING**

23 In its Order, the Court also identified its concern as to whether the Trustee can recover
 24 against J&C where the Trustee did not include King Solarman as a party in this adversary
 25

26 _____
 27 ⁷ Complaint, ¶¶ 26-31.
 28 ⁸ Complaint, ¶¶ 24-25.
 29 ⁹ Complaint, ¶¶ 34-35.
 10 Complaint, ¶¶ 23, 25, 26-33.

1 proceeding. Order, pg. 3. The Trustee can address this matter further, as necessary, following the
 2 filing of an amended complaint (if permitted by the Court), but her position is that J&C is the only
 3 necessary party. *See Sanger v. Ahn*, 2019 WL 1229660, *4 (N.D. Cal. Mar. 15, 2019) (“California
 4 authority indicates that an alleged fraudulent transferor is not a necessary party in an action against
 5 a transferee to void the transfer.”) *citing Liuzza v. Bell*, 40 Cal. App. 2d 417, 425 (1940) & *Blanc*
 6 *v. Paymaster Mining Co.*, 95 Cal. 524, 30 P. 765 (1892); *see also In re AVI, Inc.*, 389 B.R. 721,
 7 735 (B.A.P. 9th Cir. 2008) (“[W]e conclude that Congress intended avoidance as one remedy and
 8 recovery as another. Thus, we hold that a trustee is not required to avoid the initial transfer from
 9 the initial transferee before seeking recovery from subsequent transferees under § 550(a)(2).”); *In*
 10 *re Int'l Admin. Servs., Inc.*, 408 F.3d 689, 706 (11th Cir. 2005).

LEGAL STANDARD

12 Granting a motion for default judgment is within this Court’s discretion.¹¹ In *Eitel*,¹² the
 13 Ninth Circuit enumerated the following seven factors that this Court may consider in exercising
 14 its discretion and determining whether to grant default judgment: (1) the possibility of prejudice
 15 to the plaintiff; (2) the merits of the substantive claim; (3) the sufficiency of the complaint; (4) the
 16 amount of money at stake in the action; (5) the possibility of a dispute concerning material facts;
 17 (6) whether the default was due to excusable neglect; and (7) the policy underlying the F.R.C.P.
 18 favoring a decision on the merits.¹³

19 Once a court determines that the defendant is in default, the factual allegations of
 20 the complaint, except those relating to the amount of damages, will be taken as true.
 21 [] In addition, the party seeking entry of the default judgment is entitled to have all
 22 reasonable inferences from well-pleaded allegations in the complaint drawn in its
 23 favor.¹⁴

APPLICATION OF THE EITAL FACTORS

24 In this Court’s Order, this Court stated that “[i]n this instance, the court is concerned with
 25 the merits of the plaintiff’s substantive claim and the sufficiency of the complaint.” Order, pg. 2.

26
 27 ¹¹ *PepsiCo, Inc. v. California Sec. Cans*, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002).

28 ¹² *Eital v. McCool*, 782 F.2d 1470, 71-72 (1986) (citations omitted).

¹³ *Id.*

¹⁴ *In re SK Foods, LP*, 499 B.R. 809, 834 (Bankr. E.D. Cal. 2013).

1 Accordingly, the Trustee begins with the factors which do not appear to be the focus of the Court's
 2 concern, and then closes with the factors (Nos. 2 & 3) which do concern the Court.

3 But as stated above, the Trustee requests leave to file an amended complaint to address this
 4 Court's concerns.

5 Factor No. 1 - Possibility of Prejudice.

6 "A plaintiff is prejudiced if, absent the entry of judgment, he will be left without a
 7 remedy."¹⁵ Here, if the Trustee's motion for default judgment is not granted, the Trustee will likely
 8 be without other recourse for recovery because J&C has been served with the Trustee's complaint
 9 and has not responded. Therefore, this factor is satisfied.

10 Factor No. 4 - Amount at Stake

11 "[W]here the sum of money at stake is tailored to the specific misconduct of the defendant,
 12 default judgment may be appropriate."¹⁶ The Trustee seeks to recover specific amounts transferred
 13 in furtherance of a Ponzi scheme, and not an arbitrary amount. The Trustee identifies the transfers
 14 with specificity in her complaint (including transferor, transferee, amount, and date) and is
 15 supported by affidavit. Thus, this factor weighs in favor of a default judgment.

16 Factor No. 5 - Possibility of Dispute

17 "Upon entry of default, all facts pleaded in the complaint are taken as true, except those
 18 relating to damages," and the "failure to appear" shows that it is "unlikely" that a defendant "could
 19 dispute some or all of the material facts."¹⁷ Here, J&C has not appeared, thus demonstrating that
 20 it is unlikely it would or could dispute the Trustee's allegations in her complaint.

21 Factor No. 6 - Possibility of Excusable Neglect

22 The sixth factor considers the possibility that the default resulted from excusable neglect.¹⁸
 23 "There is no indication of excusable neglect" when the defendant has "simply ignored the

26 ¹⁵ *L.A. Gem and Jewelry Design, Inc. v. Groupon, Inc., et al.*, 2021 WL 4691151, *5 (C.D. Cal.
 27 Aug. 25, 2021).

28 ¹⁶ *In re Tina Chi Houng*, 2012 WL 6052037, *6

¹⁷ *L.A. Gem and Jewelry Design*, 2021 WL 4691151, *7.

¹⁸ *PepsiCo*, 238 F. Supp. 2d at 1177.

1 Summons.”¹⁹ Here, J&C was properly served with the summons and the complaint. There is no
 2 evidence of excusable neglect.

3 Factor No. 7 - Policy for Deciding on the Merits

4 Although cases should be decided upon their merits whenever possible, this is impossible
 5 where a defendant fails to defend an action.²⁰ Further, “the preference to decide cases on the merits
 6 does not preclude a court from granting default judgment.”²¹ Here, J&C chose not to defend this
 7 action, and default final judgment is appropriate.

8 Factors Nos. 2 & 3 - Substantive Merits and Sufficiency of the Complaint

9 “The second and third *Eitel* factors overlap because a plaintiff must properly state a claim
 10 and the allegations contained in the complaint are deemed true. Thus, if the complaint is sufficient,
 11 a plaintiff’s substantive claim has merit for purposes of a request for the entry of a default
 12 judgment.”²² As noted above and as set forth in the Order, these items are the Court’s focus.

13 Here, while the Trustee submits that she has adequately pled the transfers, including the
 14 date, amount, transferor, and transferee, and that she has a claim against King Solarman that
 15 entitles her to avoid transfers made by King Solarman to JCB, and that she may recover against
 16 JCB as a subsequent transferee, she acknowledges that there may be confusion arising from the
 17 Trustee’s pleading of the complaint and their connection to the Trustee’s claims for relief.

18 Moreover, the Trustee acknowledges the lack of specific information in her motion for
 19 default judgment, which relies on the complaint.

20 **REQUEST FOR LEAVE TO FILE AN AMENDED COMPLAINT**

21 F.R.C.P. 15(a), made applicable by F.R.B.P. 7015, instructs that leave to file an amended
 22 complaint be “freely given when justice so requires.” This policy is “to be applied with extreme
 23 liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir.2001)
 24 (quotations omitted). The Trustee respectfully requests leave to file an amended complaint.

25
 26
 27 ¹⁹ *J&J Sports Prod., Inc. v. Tacos La Palma, LLC*, 2013 WL 3944132, *2 (D. Nev. July 30, 2013).

28 ²⁰ *PepsiCo*, 238 F. Supp. 2d at 1177.

²¹ *Id.*

²² *L.A. Gem and Jewelry Design*, 2021 WL 4691151, *5.

The most important factor in this analysis, *i.e.*, whether there is prejudice to the opposing party, weighs heavily in favor of allowing leave to amend. *See Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (“Prejudice is the touchstone of the inquiry under rule 15(a).”) (quotations omitted). J&C did not respond to the Trustee’s original complaint and therefore will not be prejudiced by the Trustee’s filing of an amended complaint. In addition, this is the Trustee’s first request for leave to amend, there is no evidence she has acted in bad faith or for purposes of delay, and amendment will not be futile.

As to this final point, the Trustee intends to plead an amended complaint (if permitted by the Court) in a less confusing manner. The Trustee intends to plead, with clarity and fact-specificity: (1) that the Trustee possesses claims against King Solarman in connection with its participation with Carpoff in looting DC Solar, which was a primary purpose of the Carpoff Ponzi Scheme; (2) that the transfers made from DC Solar to King Solarman; (3) that the transfers made from King Solarman to J&C; (4) connections between and among the entities, the transfers, Carpoff and his family members, and the Carpoff Ponzi Scheme.

These facts, and others which the Trustee can and intends to plead in an amended complaint, can and will show satisfaction of the elements of the Trustee's claims, in a non-confusing manner, as well as further support her requested relief.

CONCLUSION

For the reasons set forth above, the Trustee requests leave to file an amended complaint.

DATED: March 25, 2022.

HARTMAN & HARTMAN

/s/ *Jeffrey L. Hartman, Esq.*

Jeffrey L. Hartman, Esq.

Attorney for Trustee Christina W. Lovato

MELAND BUDWICK, P.A.

/s/ Solomon B. Genet, Esq.

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Alexander E. Brody, Esq.

Attorney for Trustee Christina W. Lovato

CERTIFICATE OF SERVICE

I certify that on March 25, 2022, I caused to be served the following document(s):

**TRUSTEE'S SUPPLEMENTAL BRIEF AND REQUEST FOR LEAVE
TO FILE AN AMENDED COMPLAINT IN CONNECTION WITH THIS
COURT'S ORDER AT ECF NO. 22**

I caused to be served the above-named document(s) as indicated below:

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Irvine, CA 92612

I declare under penalty of perjury that the foregoing is true and correct.

DATED: March 25, 2022.

/s/ Solomon B. Genet, Esq.
Solomon B. Genet, Esq.